IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.336 of 2006

Decided on: August 7, 2006

Ludar Dutt **.....Appellant.**

VERSUS

Miss Punam and others **....Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. G.R. Palsara, Advocate.

For the respondents : Nemo.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondents-plaintiffs are admittedly the joint owners of certain property on which the appellant-defendant has constructed a house. The plaintiffs filed a suit for injunction restraining the appellant-defendant from interfering in their right of joint ownership and possession and enjoyment of the joint property, including the site of house constructed by the appellant-defendant.

3. Appellant-defendant took the plea that he having constructed the house with his own funds and resources and the plaintiffs having not contributed any money and resources, he (appellant-defendant) has acquired exclusive title by prescription.

4. The two Courts below have dismissed the plea of adverse possession set up by the appellant-defendant and rightly so

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Whether the reporters of the local papers may be allowed to see the judgment?

because co-owner who raises structure on joint property does not become exclusive owner of the site of that structure nor can he set up the plea of adverse possession simply for the reason that no objection was raised at the time of construction of the house. A joint co-owner can succeed in the plea of adverse possession only if he pleads and proves that at any given point of time he had disclaimed the right of the co-owner not in physical possession and set up exclusive title in himself.

5. No substantial question of law is involved. Only questions of facts are there and the two Courts below have returned concurrent finding about these questions, which are, whether the respondents-plaintiffs are joint owners of the suit property and whether the appellant-defendant has acquired title by prescription qua the share of the respondents-defendants.

6. For the foregoing reasons, the appeal is dismissed.

CMPs No.614 & 615 of 2006

Infructuous.

August 7, 2006(sd) **(Surjit Singh, J.)**